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SUBMISSION

By Mayor F. Gordon Stronach, Mayor of the City of London, Ontario to The Ontario Committee on Taxation.

It will be recalled that in October, 1963, the Association of Ontario Mayors and Reeves submitted a Brief to your august body and requested changes in the taxation structure as it affects property tax. I would specifically refer to the section regarding the administration of Justice and, owing to its brevity, quote hereunder:

"Municipalities are required by statute to provide the jails and lock-ups, to pay the salaries of the jail guards, to pay for court houses for the county and supreme courts, to pay coroners, pathologists, post mortem and inquest fees, to pay for witnesses and jurors, to provide accommodation for Division Courts, Magistrates Courts, Federal Admiralty Courts and Tax Appeal Tribunals, to pay magistrates and their staffs, to provide accommodation for a legal law library for lawyers, to provide for transportation of prisoners, the administration of and accommodation for juvenile and family courts and other expenses related to the administration of Justice. To all of these, this Association strongly objects. There are a few by-law enforcement cases that come before the Magistrates' Courts which could be said to be the responsibility of municipalities but otherwise they have no responsibility except to pay. Magistrates, judges and coroners are not employed or appointed by municipalities.

The revenue derived from fines and forfeitures by municipalities is minute compared to the expense involved. As the municipalities pay the police who enforce the laws of Canada and of the Province they may still have a claim to a share in the revenue derived. Our Association in annual general meeting

has resolved that the Province be urged again to assume the entire cost of the Administration of Justice including the construction and maintenance of Court Houses and Jails and the administration of juvenile and family courts."

In this two year interval, through my continued association with fellow mayors of the Province, there is a general feeling that the revenue derived from registry offices, court houses, etc., is by no means minute but, as the bulk of this is disbursed to the province, there is very little left for the municipalities and it is, therefore, felt that the municipalities are prepared to give up any such revenue. There is one difference, however, and that is that the municipalities are making no attempt whatsoever to shun the responsibility of administration of Justice in the municipality or Magistrates' Courts; likewise, accepting full responsibility for the provision of police services and the like, for the protection of persons and property.

There is a prime need, throughout the province, for modern accommodation of court houses for the superior courts, registry offices and jail accommodation. So long as the financial responsibility remains as it is in its present form, it is not likely that the municipalities will be able to carry out their duties. Of course, it is pointed out that a completely different arrangement prevails in the newer parts of the province that do not have the county system government because the province, in such areas, does take complete responsibility for the provision of such accommodation. In the London situation, if such could be taken as an example in respect to revenue, from the total revenue received from the administration of Justice, exclusive of that in the lower or Magistrate's level, $482,601.67, received, the distribution was broken down as follows:

Province of Ontario	$408,597.68
City of London	56,810.14
County of Middlesex	17,193.85
	$482,601.67

A recent news release, contained in the Globe & Mail, carried excerpts from the speech of Mr. W. B. Common, formerly deputy attorney general of Ontario and now personal counsel to the Ontario Law Reform Commission. Owing to Mr. Common's stature and familiarity with this problem, I am taking the liberty of quoting this news article:

> "The province should enact an administration of justice act which would make it solely responsible for the cost of building court houses and paying the required salaries. It would also provide for fines and other court revenues to be funnelled into provincial coffers."

It appears that, should the province take over the financial responsibility for superior court houses, registry offices, jails, etc., the task would provide no great hardship in the light of the revenue received from such services. In the event, however, that additional revenue is required, possibly the old Mortgage Tax Act should be reinstated. It only applied to municipalities of over 200,000, but even so, only three took advantage of it. A brief history of this Act is as follows:

The Mortgage Tax Act was first enacted as part of The Statute Law Amendment Act in 1918 (8 George V, Chapter 20, Section 70). This probably explains why it escaped the attention of so many municipalities. It was amended in 1919 (9 George V, Chapter 25, Section 37). It first appeared under the name of The Mortgage Tax Act in R.S.O. 1927, Chapter 156 and remained in that form in R.S.O. 1937, Chapter 172 and R.S.O. 1950, Chapter 240.

It was repealed in 1953 by "An Act to Repeal The Mortgage Tax Act" (2 Elizabeth, Chapter 67). It would seem that Toronto, Hamilton and York County were the only municipalities to take advantage of this Act and it is interesting to note that the Repealing Act provided for payment "out of such monies as may be

appropriated therefore by the Legislature" of (a) $130,000 to The County of York; (b) $80,000 to the City of Toronto; (c) $30,000 to the City of Hamilton.

I am enclosing a photo copy of the Mortgage Tax Act R.S.O. 1950, Chapter 240 which is the form in which it stood before its repeal.

You will note that the Act called for a tax of 1/10th of 1%which is one-half of the amount required under the Land Transfer Tax Act.

If a mortgage tax were imposed, I would suggest 2/5ths of 1% which would be $4.00 per $1,000 on the face amount of every mortgage.

Revenue could be supplemented by the imposition of an additional fee ($1.00 per $1,000) on estates of all persons whose estate were probated or filed for administration in the Surrogate Court. Revenue could also be supplemented by an extra $1.00 on all Writs issued, as well as Mechanic's Liens filed.

From the foregoing it can be readily seen that sufficient revenue would be forthcoming to pay for any debenture debt occasioned by the construction of combined court houses and registry offices, as well as provincial jails. It would also have the advantage of requiring the people who take advantage of these facilities to pay for same rather than putting an additional tax on the land owner.

Respectfully submitted,

Mayor of London

CHAPTER 240

The Mortgage Tax Act

Taxation of mortgages by municipality having population of 200,000 or more.

1.—(1) The council of any municipality having a population of 200,000 or more may by by-law provide that a tax not exceeding one-tenth of one per cent upon the sum of money secured by each instrument by way of mortgage or charge, registered in a registry or land titles office upon lands within the municipality, shall be paid by the party registering the same and any such by-law may be repealed, altered or amended from time to time.

By-law to be deposited and tax collected.

(2) Upon the passing of any by-law under subsection 1 by the council of a municipality, a copy thereof, certified by the clerk of the municipality under the seal of the corporation, shall be deposited with each registrar and master whose registry or land titles division covers land in the municipality, and from and after the deposit of the by-law as aforesaid, such tax as is provided shall be collected by the registrar or master as the case may be, before he registers the mortgage. R.S.O. 1937, c. 172, s. 1.

Registrar entitled to percentage.

2.—(1) Any registrar or master, not paid by salary, shall be entitled to retain to his own use two and one-half per cent of the moneys collected by him.

Payment of tax to treasurer.

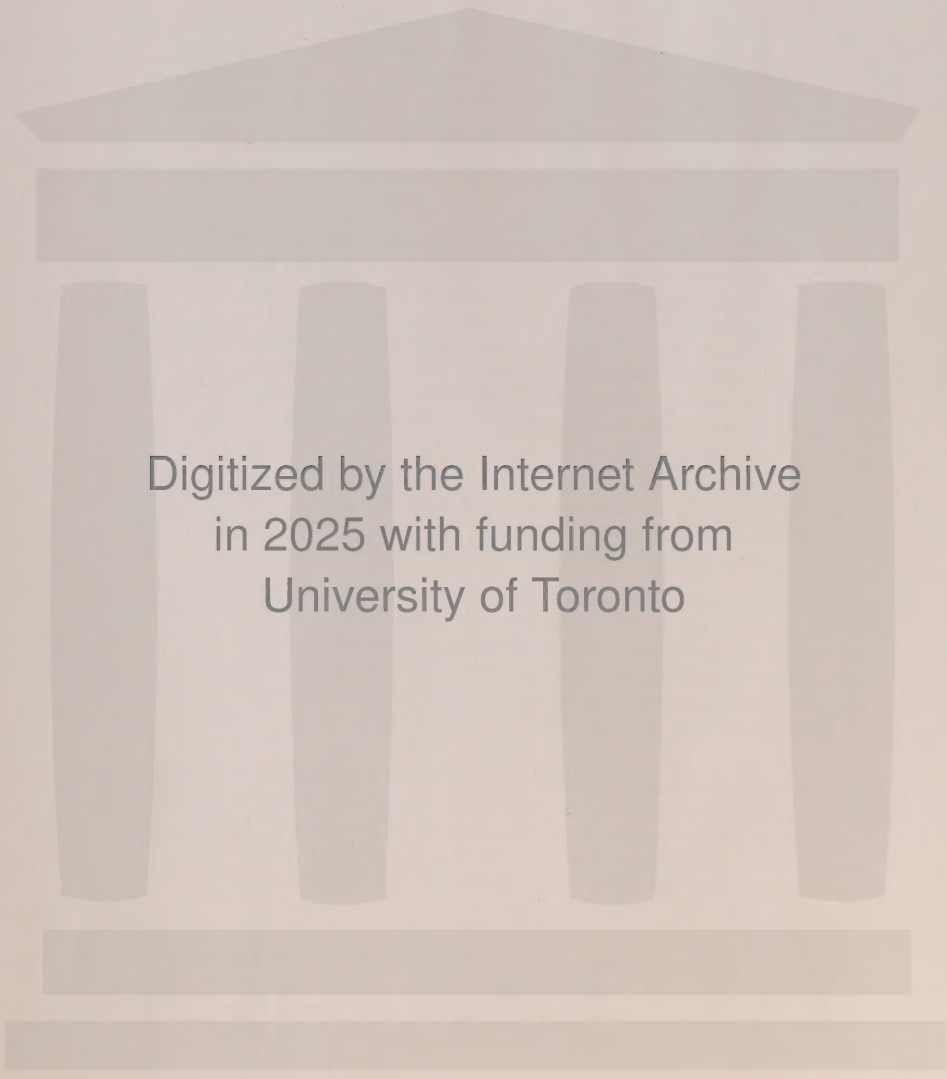
(2) The registrar and master shall, within the first week of each month, furnish the Inspector of Legal Offices with a statement of the amount collected during the previous month in respect of the tax, and shall pay over the amount thereof, less the percentage provided for in subsection 1, to the treasurer of the municipality. R.S.O. 1937, c. 172, s. 2.

Registrar may require affidavit as to amount of mortgage.

3. Where the amount to be secured by any mortgage is not clearly stated therein, or where the registrar or master has any doubt as to the amount intended to be secured, he shall require the full and true amount of the moneys intended to be secured by the mortgage to be proved by affidavit to be filed with him. R.S.O. 1937, c. 172, s. 3.

Tax to be payable once only.

4.—(1) Notwithstanding anything in this Act or in any by-law heretofore or hereafter passed under subsection 1 of section 1, and notwithstanding that the same instrument may be registered or entered more than once, or that more than one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instrument may be registered or entered for securing the same sum of money, or that any such instrument or instruments may be registered or entered in more than one registry office or land titles office, or in a registry office and land titles office, the tax imposed by any such by-law shall be payable once only in respect of any one transaction for securing money by way of mortgage or charge, or by mortgage and charge, and shall be payable upon delivering to the registrar, or lodging in the land titles office the first instrument registered or lodged in the transaction.

Tax not to be collected when receipt for payment on prior registration produced. Rev. Stat., cc. 197, 336.

(2) Where lands upon which a sum of money is secured are registered under *The Land Titles Act*, and other lands upon which the same sum of money is secured are subject to *The Registry Act*, and the instruments are registered or lodged and appear to be executed as part of the same transaction for securing such sum of money, and it appears by the production of the receipt of the master or registrar that the tax has been paid upon the registering or lodging of one of such instruments, the master or registrar shall not require any further payment of the tax before registering or entering the instrument delivered to him.

Division of tax where lands in different registry divisions.

(3) Where the lands upon which any sum of money is charged are partly in one registry division and partly in another, or parts of the lands are registered under *The Land Titles Act*, and parts are subject to *The Registry Act*, the registrar or master receiving the tax shall retain the percentage mentioned in subsection 1 of section 2, and shall pay over to the registrar or master in whose office any mortgage or charge is subsequently registered or entered for securing the same sum of money, such proportion of the percentage as may be agreed upon between them, and in case of disagreement, the amount to be paid shall be determined by the Inspector of Legal Offices. R.S.O. 1937, c. 172, s. 4.

No tax on collateral instrument.

5. Where an instrument purports to be executed concurrently with or as collateral security to a mortgage or charge already registered, the registrar or master shall register or enter such concurrent or collateral instrument without requiring the payment of the tax. R.S.O. 1937, c. 172, s. 5.

Tax not to be collected on assignment of lease as collateral security.

6. Where any sum of money is charged upon freehold lands and leasehold lands, and a mortgage or assignment of the lease is registered or lodged as security in addition to and separately from the mortgage or charge upon the freehold lands, and the person delivering the mortgage or charge to the registrar or master produces a receipt for payment of the tax upon the registration of any other mortgage or charge or assignment, given as security for the same sum, the regis-

trar or master shall receive and register or enter the mortgage, charge or assignment without requiring the payment of the tax. R.S.O. 1937, c. 172, s. 6.

Tax not to be collected on renewal except as to additional amount.

7. Where a mortgage or charge recites that it is given as a renewal of a mortgage or charge already registered, no tax shall be payable upon the registration of such renewal mortgage or charge, except to the extent by which the amount secured by such renewal mortgage or charge exceeds the amount required to pay off the original mortgage or charge but the registrar or master shall not register or enter such renewal mortgage or charge until the full and true amount of the moneys required to pay off such original mortgage or charge has been proven by affidavit filed with him. R.S.O. 1937, c. 172, s. 7.

Tax not to be collected on amount required to pay off prior mortgage.

8. Where a mortgage or charge recites that it is given to secure moneys, a portion of which moneys is required to pay off a prior mortgage or charge already registered, no tax shall be payable upon the registration of such mortgage or charge except to the extent by which the amount secured by such mortgage or charge exceeds the amount required to pay off the prior mortgage or charge, but the registrar or master shall not register or enter the new mortgage or charge until the full and true amount of the moneys required to pay off the prior mortgage or charge has been proven by affidavit filed with him. R.S.O. 1937, c. 172, s. 8.

Proceedings where tax disputed.

9. Where the right of the registrar or master to require the payment of the tax under this Act or any portion thereof, is disputed by the person registering or lodging a mortgage or charge, the tax may be paid under protest, and the registrar or master shall give a receipt in writing signed by him for the amount paid, and shall state that the same has been received subject to protest, and shall thereupon refer the matter to the decision of the Inspector of Legal Offices, who may order the refund of the tax or any portion thereof to the person paying the same. R.S.O. 1937, c. 172, s. 9.